



CITY OF DULUTH
Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197
Phone: 218/730.5580 Fax: 218/723-3559

STAFF REPORT

File Number	PL 13-078	Contact	Steven Robertson
Application Type	Vacation of Street Easement	Planning Commission Date	June 11, 2013
Deadline for Action	Application Date	May 16, 2013	60 Days N/A
	Date Extension Letter Mailed	May 21, 2013	120 Days N/A
Location of Subject	Weber Avenue between 200 and 300 Buffalo Street		
Applicant	Billman Construction, Inc.	Contact	glbillman@msn.com
Agent	Gregg Billman	Contact	glbillman@msn.com
Legal Description	Between 010 3410 0431 and 010 3410 04190		
Site Visit Date	June 3, 2013	Sign Notice Date	May 27, 2013
Neighbor Letter Date	May 23, 2013	Number of Letters Sent	42

Proposal

To vacate Weber Avenue and construct new homes along newly constructed Buffalo Street. The applicant wishes to build a new home on the vacated right of way.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Vacant/ROW	Traditional Neighborhood
North	R-1	Residential	Traditional Neighborhood
South	R-1	Vacant/ROW	Preservation
East	R-1	Residential	Traditional Neighborhood
West	R-1	Residential	Traditional Neighborhood

Summary of Code Requirements (reference section with a brief description):

Vacation of public rights of way and/or easements requires a Planning Commission public hearing with a recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the Council.

Code Requirements are found in the UDC Section 50-37.6. The Planning Commission shall review the proposed vacation, and council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

G-1

Comprehensive Plan Findings (Governing Principle and/or Policies) and Current History (if applicable):

Traditional Neighborhood Future Land Use. Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

Note about Department Process: the Planning Division encourages vacations of right of ways for the entire length of a block. This particular vacation is only for half of the block.

Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):

- 1) The applicant owns the land to the southwest of the proposed vacation area. The property owners submitted a petition that contained a majority of the affected property owners' signatures.
- 2) The unimproved right of way easement is 66 feet wide. There are some utilities located in the easement requested to be vacated. Minnesota Power has requested a 10 foot easement be maintained on the eastern portion of the right of way, and the City Engineering has requested that a 20 foot easement be maintained on the southern portion of the right of way.
- 3) This vacation, if approved, will not deprive any currently platted lots of access to a public right of way.
- 4) Staff believe this right of way is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city (as long as an easement is maintained); the right of way is not and will not be needed to provide pedestrian or recreational access to the water; and the public right of way is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.
- 5) Comments were received from the public on the requested right of way vacation, mostly relating to current concerns over stormwater impacts and concerns over future stormwater impacts when the right of way is developed for additional housing (see attached citizen letter).
- 6) Vacations of streets lapse unless a plat showing the vacation is recorded with the county recorder within 90 days after final approval. The Duluth City Clerk facilitates the recording process.

Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

Based on the findings, Staff recommends that the Planning Commission recommend approval to the City Council for the petition to vacate the street easement with the following condition:

- 1) Easements be maintained as requested by City Engineering and Minnesota Power (note: easements are already reflected in submitted exhibit).
- 2) Vacation goes into effect after being recorded at the County Recorder's office. Applicant will work with Duluth City Clerk's office if needed to assist in the recording process.

6-2

Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)



Legend

stream_ci
FLAG

Trout Stream (GPS)

Other Stream (GPS)

Right-of-Way Type

Road or Alley ROW

Vacated ROW

Easement Type

Utility Easement

Other Easement

Zoning (Final)

Future Land Use

Preservation

Recreation

Rural Residential

Low-density Neighborhood

Traditional Neighborhood

Urban Residential

Neighborhood Commercial

Neighborhood Mixed Use

General Mixed Use

Central Business Secondary

Central Business Primary

Auto Oriented Commercial

Large-scale Commercial

Business Park

Tourism/Entertainment District

Medical District

Institutional

Commercial Waterfront

Industrial Waterfront

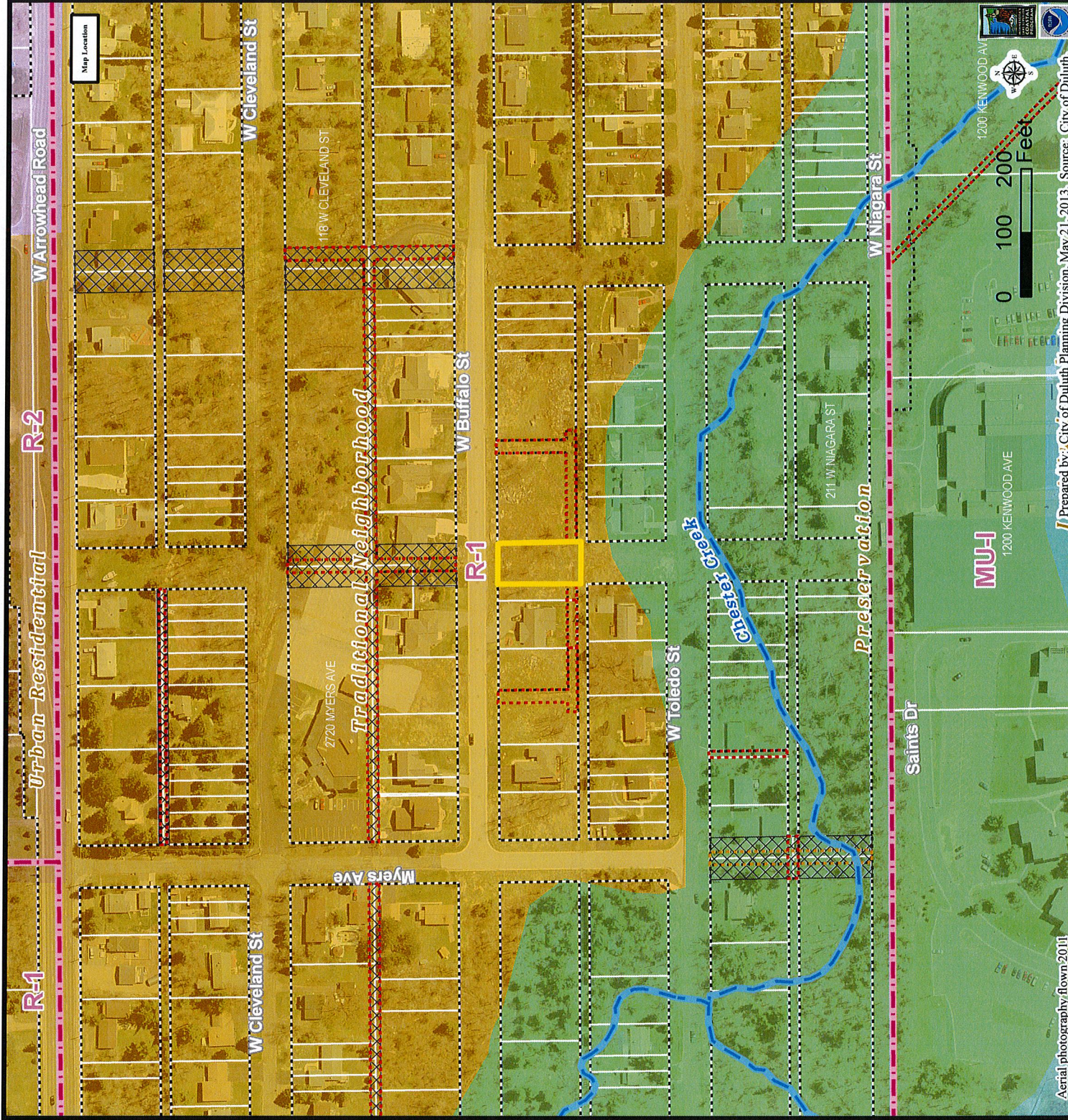
Light Industrial

General Industrial

Transportation and Utilities

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for damages in connection with the use of this information contained within.

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Aerial photography flown 2010

Prepared by: City of Duluth Planning Division, May 21, 2013. Source: City of Duluth.



City Planning

PL 13-078

Vacation

200 Buffalo Street

Legend

DuluthStream_cl

TROUT_FLAG

Trout Stream (GPS)

Other Stream (GPS)

Trout Stream (GPS)

Other Stream (GPS)

Water Distribution System

30 - 60" Water Pipe

16 - 24" Water Pipe

4 - 6" Water Pipe

Sanitary Sewer Collection System

Sanitary Sewer Collector

Sanitary Sewer Interceptor

Sanitary Sewer Forced Main

Storage Basin

Pump Station

Gas Distribution Main

8" - 16" Gas Pipes

4" - 6" Gas Pipes

0" - 4" Gas Pipes

Storm Sewer Collection System

Storm Sewer Pipe

Storm Sewer Catch Basin

Discharge Points

Wetlands (NRRI)

Right-of-Way Type

Road or Alley ROW

Vacated ROW

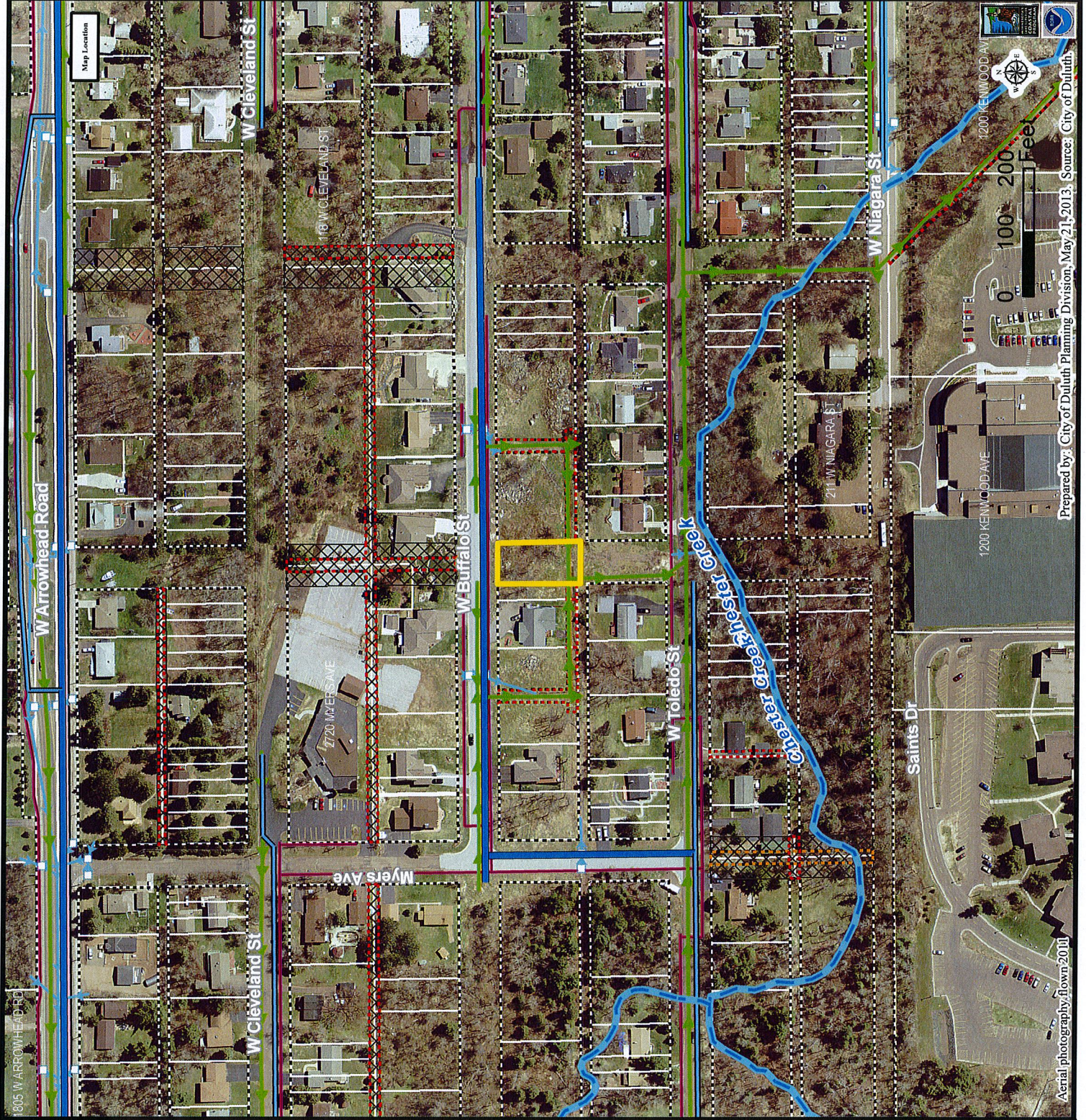
Easement Type

Utility Easement

Other Easement

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G-4



Prepared by: City of Duluth Planning Division, May 21, 2013. Source: City of Duluth.



Legend

DuluthStream_cl

TROUT_FLAG

Trout Stream (GPS)

Other Stream (GPS)

Trout Stream (GPS)

Other Stream (GPS)

Water Distribution System

30 - 60" Water Pipe

16 - 24" Water Pipe

4 - 6" Water Pipe

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Discharge_Points

Wetlands (NRRI)

Right-of-Way Type

Road or Alley ROW

Vacated ROW

Easement Type

Utility Easement

Other Easement

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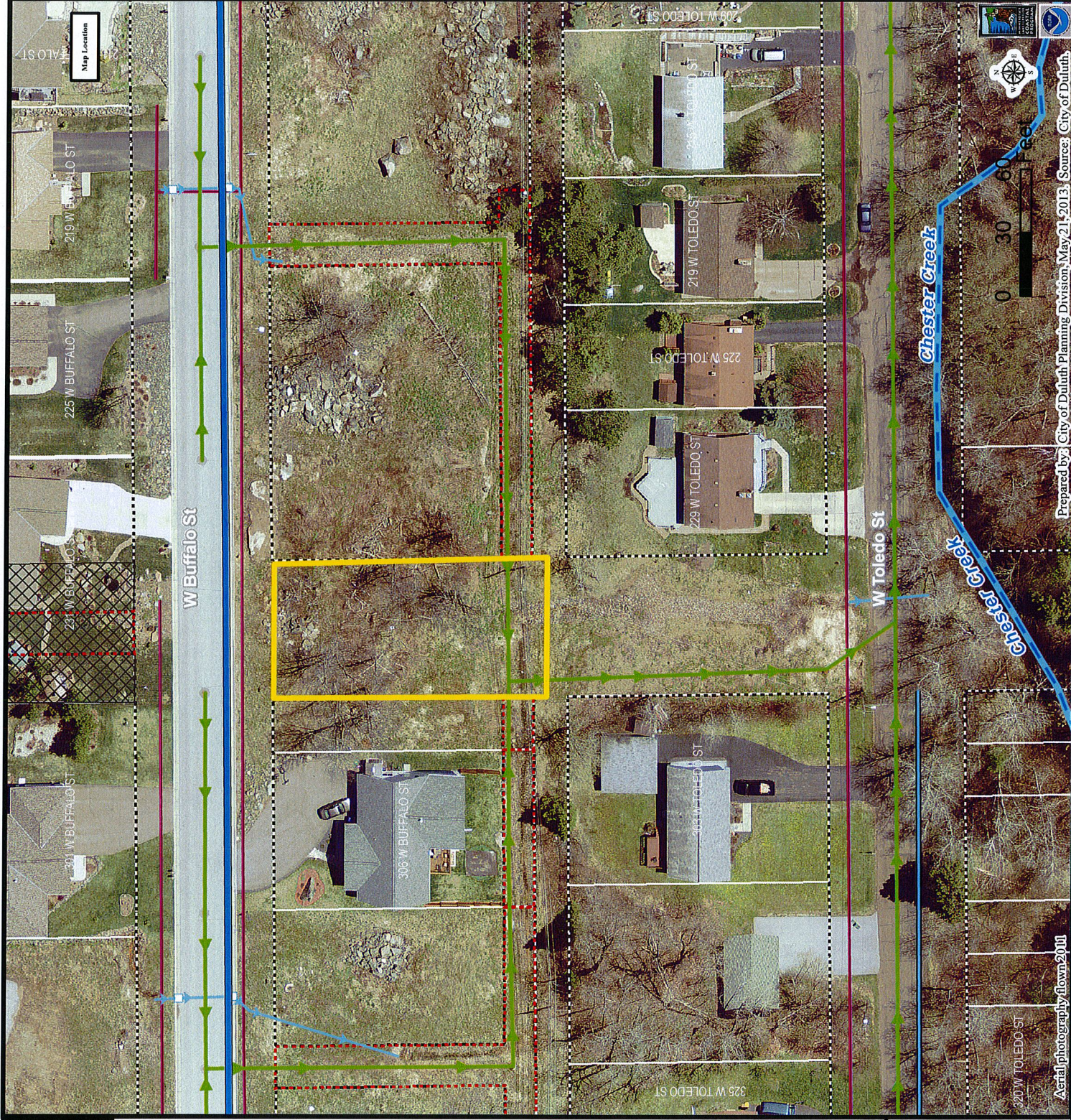
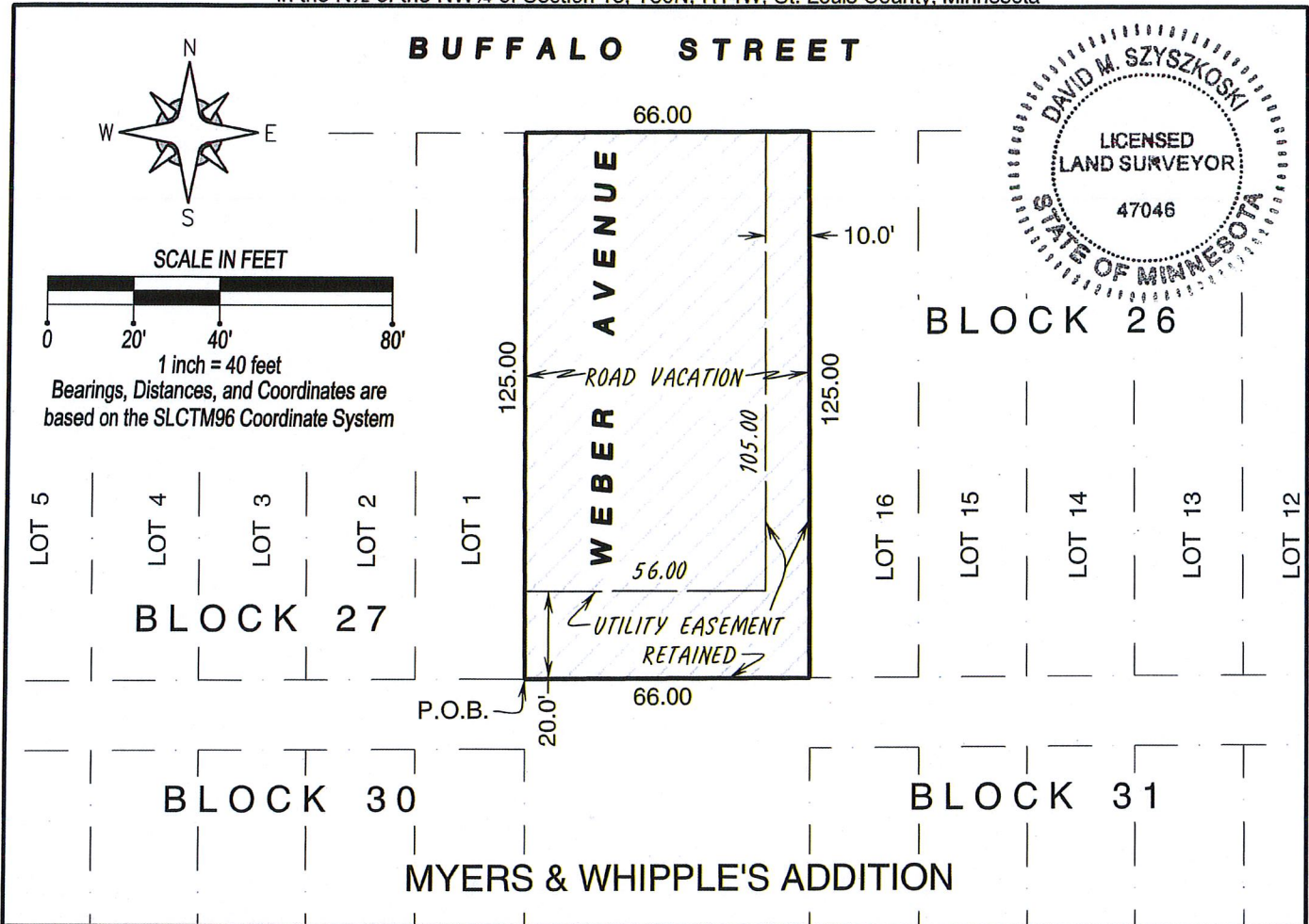


Exhibit of part of Weber Avenue in Myers and Whipple's Addition to Duluth
in the N½ of the NW¼ of Section 15, T50N, R14W, St. Louis County, Minnesota



Vacation Legal Description:

Beginning at the southeast corner of Block 27, Myers and Whipple's Addition to Duluth; thence easterly on the easterly extension of the southerly line of Block 27 to the southwest corner of Block 26, Myers and Whipple's Addition to Duluth; thence northerly on the west line of Block 26 to the northwest corner of Block 26; thence westerly on the westerly extension of the northerly line of Block 26 to the northeast corner of Block 27; thence southerly along the easterly line of Block 27 to the point of beginning.

Utility Easement Legal Description:

Beginning at the southeast corner of Block 27, Myers and Whipple's Addition to Duluth; thence easterly on the easterly extension of the southerly line of Block 27 to the southwest corner of Block 26, Myers and Whipple's Addition to Duluth; thence northerly on the west line of Block 26 to the northwest corner of Block 26; thence westerly on the westerly extension of the northerly line of Block 26 for a distance of ten (10) feet; thence southerly on a line parallel to and ten (10) feet westerly of the westerly line of Block 26 for a distance of one hundred five (105) feet; thence westerly on a line parallel to and twenty (20) feet northerly of the easterly extension of the southerly line of Block 27 for a distance of fifty six (56) feet to a point on the east line of Block 27 twenty (20) feet northerly of the point of beginning; thence southerly twenty (20) feet along the east line of Block 27 to the point of beginning.

Approved by the City Engineer of Duluth, MN

Date: _____ by: _____

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Date: 5/24/2013

DAVID SZYSZKOSKI
MINNESOTA LICENSE NO. 47046



ENGINEERS • SURVEYORS • PLANNERS
SALO ENGINEERING, INC.
4560 Norway Pines Place • Duluth, MN 55802
SALO JOB NUMBER: E1719 ph 218/727-8796

Vacation & Utility Easement
Exhibit in Myers & Whipple's
Addition to Duluth
For : Gregg Billman

6-6

Mr. Steven Robertson
Senior Planner
City of Duluth

Dear Mr. Robertson

RE: 6/11 Public Hearing on the vacation of Weber Avenue between 200 and 300 Buffalo Street (PL 13-078).

My wife and I are unable to attend this meeting but we would like to go on record as being in opposition to any additional vacation of Weber Avenue. We do so citing ten years of a lack of follow up from the initial West Buffalo Street development on the part of Billman Construction:

1) Billman Construction promised to remove silt fences erected during 2000-2002 construction. In the following pictures you can see 2 that remain in place today, there are more.



2) Billman Construction promised to remove boulders that tumbled onto our property as a result of their blasting. They still remain in place today.



G-7

3) The few remaining trees and vegetation located in the Weber Avenue easement provide some protection to the residents of West Toledo Street from run off and erosion. We've seen the result of the clear cutting of the development without promised replanting as stated by Billman Construction in their original site development plan

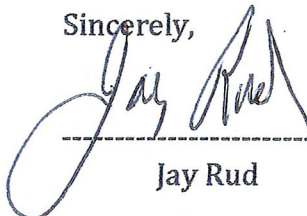


All of the homes immediately below the West Buffalo Street development suffered considerable damage during the June 2012 flooding. Some was the result of an over-burdened sanitary sewer system and some was a result of runoff from the development itself. Removing more natural vegetation and adding more homes to an already overtaxed sanitary sewer system will just exacerbate the problems of existing homeowners.

4) During the construction of the runoff basin pictured above (below the trees) Billman Construction removed a storm drain from the intersection of Weber Avenue and West Toledo Street. I met with Mr. Billman and a representative from City Public Works (2001 or 2002) regarding this issue. Mr. Billman indicated he would replace the drain. 10 years later that has yet to happen.

Considering Billman Construction's lack of follow up, unfulfilled promises, and poor neighborhood stewardship we would question how the City can possibly reward them with additional building opportunities? Add to this the increased risk placed on existing residences and rejecting this application would seem to be a no-brainer.

Sincerely,


Jay Rud


Sharon Rud

225 West Toledo Street
Duluth, MN 55811

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